

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PECO ENERGY COMPANY :
2301 Market Street :
Philadelphia, PA 19103 :

Plaintiff :

v. :

WAMPOLE – MILLER, INC. D/B/A :
MILLER BROS :
301 Alan Wood Road :
Conshohocken PA 19428-1138 :

and :

ZURICH AMERICAN :
INSURANCE COMPANY :
525 Market St Ste 2900 :
San Francisco, CA, 94105 :

Defendants :

COMPLAINT

The Plaintiff, PECO Energy Company (“PECO”), hereby makes claim for declaratory relief against Defendants, Wampole – Miller, Inc. D/B/A Miller Bros (“Miller Bros”) and Zurich American Insurance Company (“Zurich”), and avers as follows:

PARTIES

1. The Plaintiff, PECO, is a corporation in the Commonwealth of Pennsylvania with its principal place of business located at 2301 Market Street, Philadelphia, Pennsylvania 19103.
2. Defendant, Wampole – Miller, Inc. D/B/A Miller Bros (“Miller Bros”) is a

business, partnership, corporation or other entity doing business in the Commonwealth of Pennsylvania with its registered corporate address located at 301 Alan Wood Road, Conshohocken, PA 19428.

3. Defendant, Zurich American Insurance Company ("Zurich") is a business, partnership, corporation or other entity doing business in the Commonwealth of Pennsylvania with its registered corporate address located at 525 Market St Ste. 2900 San Francisco, CA 94105.

GENERAL AVERMENTS

1. Elena Kolchinksy is a plaintiff in an action which is currently pending before the Philadelphia Court of Common Pleas, captioned Kolchinksy v. PECO Energy Company et al., Phila. C.C.P, June Term, 2020, No. 0063. (the "Civil Action.") A copy of the Complaint in the Civil Action (the "Civil Action Complaint") is attached hereto as Exhibit "A".

2. PECO incorporates the allegations of the Civil Action Complaint in this complaint as if stated herein at length without admitting the truth of such allegations.

3. At all times material hereto, Defendant, Miller Bros served as an electrical contractor at 12th and Moravian Streets in Philadelphia (the "premises") pursuant a Master Terms and Conditions Agreement dated September 1, 2014, originally made between Miller Brothers Electrical Contractors and Exelon Business Services Company, LLC (the "Contract"). The Contract is not attached hereto due to the confidential nature and terms of the contract.

4. Miller Bros and PECO are respective affiliate entities of Miller Brothers Electrical Contractors and Exelon Business Services Company, LLC.

5. This Declaratory Judgment Action arises out of Miller Bros and its insurance carrier, Zurich's refusal to provide PECO with a defense and indemnity in the Civil Action as required by the plain terms of the Contract.

6. According to the Civil Action Complaint, on or about June 7, 2018, the plaintiff, Elena Kolchinsky, fell over an allegedly defective metal grate owned by PECO located on the premises. See ¶6 of Exhibit "A."

7. At the time of Ms. Kolchinsky's trip and fall, pursuant to the Contract, Miller Bros was working at the premises for PECO, under job order #8253778 and #14883590.

8. Therefore, the claims and allegations set forth in the Civil Action Complaint were covered under terms of the Contract.

9. Pursuant to the Contract, Miller Bros is required to indemnify, defend upon request, and hold harmless PECO against all losses, claims, damages, expense (including advance of reasonable attorneys' fees and other defense costs) and liabilities sustained by third parties for bodily injury, sickness, disease or death, caused by the negligence or intentional acts of Miller Bros.

10. Pursuant to the Contract, Miller Bros is required to provide PECO with advance, written notice of the settlement of any claims pertaining to or arising out of the work performed under the Contract and include PECO as a released party at PECO's request.

11. Pursuant to the Contract, Miller Bros is required to maintain a comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.

12. Moreover, such policy is required to name PECO as additional insured.

13. At all relevant times to present, Miller Bros' carrier for these insurance policies is Defendant Zurich.

COUNT I
CLAIM FOR DECLARATORY RELIEF PURSUANT TO
42 Pa. Cons. Stat. Ann. § 7532 et seq.

14. Plaintiff incorporates the foregoing paragraphs as though set forth herein.

15. In accordance with the Contract, on or about February 17, 2021, PECO sent Miller Bros a request that Miller Bros indemnify and hold PECO harmless in the Civil Action.

16. Upon information and belief, Zurich is Miller Bros' insurance carrier applicable to this claim.

17. To date, Miller Bros and/or Zurich have not responded to PECO's requests to provide PECO with a defense and indemnification in the Civil Action.

18. Throughout the course of the Civil Action, Defendants have refused to provide a defense and indemnity to PECO despite demands to provide same.

19. PECO has incurred, and continues to incur, substantial costs in defending the Civil Action as a result of Defendants' refusal to provide a defense and indemnification, including but not limited to, attorney's fees, court costs, and other incidental expenses.

20. PECO has further incurred, and continues to incur, costs in the filing and prosecution of the instant Declaratory Judgment action as a result of Defendants' refusal to provide coverage and a defense in the Civil Action.

WHEREFORE, Plaintiff, PECO Energy Company respectfully requests that the Court render judgment in its favor and enter an order requiring Defendants, Miller Bros,

Inc. and Zurich American Insurance Company to provide Plaintiff with a defense and indemnification and award counsel fees, interest and costs and direct such other and further relief as may be appropriate.

TUCKER LAW GROUP, LLC

Dated: April 14, 2021

/s/ Kathleen Kirkpatrick
Joe H. Tucker, Esquire
Kathleen Kirkpatrick, Esquire
Attorneys for Plaintiff,
PECO ENERGY COMPANY

